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No. 00-836

IN THE

Supreme Court of the United States

GEORGE W. BUSH,

Petitioner,

v.

PALM BEACH COUNTY CANVASSING BOARD, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

Response of Katherine Harris, Florida Secretary of State, and Katherine Harris, Laurence C. Roberts, and Bob Crawford, as Members of the Florida Elections Canvassing Commission, to Petition for a Writ of Certiorari

DEBORAH K. KEARNEY
General Counsel
KEREY CARPENTER
Assistant General Counsel
Florida Department of State
PL-02 The Capitol
Tallahassee, FL 32399-0250
(850) 414-5536

BILL L. BRYANT, JR.
KATZ, KUTTER, HAGGLER, ALDERMAN, BRYANT & YON, P.A.
Highpoint Center, 12th Floor
106 East College Avenue
Tallahassee, FL 32301
(850) 224-9634

JOSEPH P. KLOCK, JR.
Counsel of Record
JOHN W. LITTLE, III
J.B. MURRAY
ARTHUR R. LEWIS, JR.
GABRIEL E. NIETO
STEEL HECTOR & DAVIS LLP
200 South Biscayne Blvd.
Suite 4000
Miami, FL 33131-2938
(305) 577-7000

Attorneys for Respondents Katherine Harris, Florida Secretary of State, and Katherine Harris, Laurence C. Roberts, and Bob Crawford, as Members of the Florida Elections Canvassing Commission

163712

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

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RESPONSE OF KATHERINE HARRIS, FLORIDA SECRETARY OF STATE, AND KATHERINE HARRIS, LAURENCE C. ROBERTS, AND BOB CRAWFORD, AS MEMBERS OF THE FLORIDA ELECTIONS CANVASSING COMMISSION, TO PETITION FOR A WRIT OF CERTIORARI

I.

STATEMENT OF THE CASE AND FACTS AND PROCEDURAL HISTORY

The Secretary of State of Florida (the "Secretary") and the Florida Elections Canvassing Commission (the "Commission")[1] are respondents in this action since they were parties below. In presenting its response, the Secretary and the Commission are focused on Florida's election law as it stood prior to November 21, 2000 (the "Pre-Decision Period"), and as it now stands (the "Post-Decision Period"). November 21, 2000, is the date that the Supreme Court of Florida handed down the decision Petitioners urge this Court to review: *Palm Beach Canvassing Board v. Katherine Harris, et al.*, Case Nos. SC 00-2346, SC 00-2347, and SC 00-2348 (Fla. filed Nov. 21, 2000). Florida's Election Code is set forth at chapters 97 through 106, Florida Statutes.[2]

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1. The Commission is composed of the Governor, the Secretary, and the Director of the Division of Elections. In this case, Florida's governor recused himself from the certification process and Florida's Commissioner of Agriculture, Bob Crawford, was appointed to fill the vacancy.

2. The Election Code is divided by chapter as follows: ch. 97 ("Qualifications and Registration of Electors"); ch. 98 ("Registration

(Cont'd)

The central focus of this case deals with Chapter 102, which is entitled "Conducting Elections and Ascertaining the Results."

The Secretary is an independently elected constitutional officer within Florida's scheme of an independently elected executive cabinet, composed of a secretary of state, attorney general, treasurer, comptroller and commissioners of agriculture and education. The Secretary is also the state's chief elections officer. *See* Fla. Const., art. IV, § 4(b); Fla. Stat. § 97.012. As such, the Secretary is charged with, among other duties, the responsibility to "[o]btain and maintain uniformity in the application, operation, and interpretation of the election laws." Fla. Stat. § 97.012(1). The Secretary is also obligated, through the Division of Elections, to "provide advisory opinions when requested by any supervisor of elections . . . relating to any provisions or possible violations of Florida election laws with respect to actions such supervisor . . . has taken or proposes to take." Fla. Stat. § 106.23(2). "The opinion, until amended or revoked, shall be binding on any person or organization who sought the opinion. . . ." *Id.*

After the polls close on an election day, two separate periods come into play: (1) the pre-certification protest

(Cont'd)
Office, Officers, and Procedures"); ch. 99 ("Candidates, Campaign Expenses, and Contesting Elections"); ch. 100 ("General, Primary, Special, Bond, and Referendum Elections"); ch. 101 ("Voting Methods and Procedure"); ch. 102 ("Conducting Elections and Ascertaining the Results"); ch. 103 ("Presidential Electors; Political Parties; Executive Committees and Members"); ch. 104 ("Election Code: Violations; Penalties") ch. 105 ("Nonpartisan Elections"); and ch. 106 ("Campaign Financing").

period (the "Protest Period") (Fla. Stat. § 102.166); and (2) the post-certification contest period (the "Contest Period") (Fla. Stat. § 102.168). The Protest Period commences immediately upon conclusion of the election and concludes when the last county canvassing board certifies its returns. Once that occurs, the Commission certifies the election returns on two separate dates. The first date is seven days after the conclusion of the election, which is when each county canvassing board is required to report its final returns to the Division of Elections.[3] Three days later, on the tenth day after the election has concluded, a supplemental filing is made by the county canvassing boards which adds the overseas absentee ballots that have been received by midnight on the tenth day. The combined returns are then certified by the Commission and become the final official returns. Once the combined returns have been received, the Commission certifies the election and declares the winners, after which the Contest Period commences.

Usually, there is no specific end to the Contest Period,[4] as there have been times in Florida when a contest resulted in the removal and substitution of an officer already well into a term. The Contest Period for any presidential election must, however, be completed six days before the meeting of the state electors, which in this case is December 18, 2000. *See* 3 U.S.C. § 5 (1997). Thus, for the general election of 2000, the Protest Period was to begin at the time the polls

3. This year all county canvassing boards certified their returns by 5 p.m. on November 14, within the seven day statutory period prescribed by Fla Stat. § 102.11 (2000).

4. A contest must be initiated within 10 days of when the last county canvassing board certifies its returns to the state. Fla. Stat. § 102.168(2).

closed at 8 p.m. on November 7 and end at 5 p.m. on November 14, a period of seven days. The Contest Period was to commence at 5:01 p.m. on November 14, and was to end at midnight on December 12, 2000, or 28 days.

As noted, after the conclusion of an election, any voter or candidate can file a Protest claiming that the election returns are erroneous (Fla. Stat. § 102.166(1)). Procedures are set forth for the review of elections by paper ballots, voting machines, and "electronic or electromechanical equipment." There is a provision for manual recounts, but only the candidate or a political party can request such a review. Fla. Stat. § 102.166(4)(a). The individual voter has no right to ask for a manual recount.[5]

County returns (with the exception of the overseas ballots) were due to the Department of State by 5 p.m. of the seventh day following the election or they would be ignored. *See id.*[6]

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5. Based upon the plain statutory language and legislative history, the Secretary and the Commission here maintained that manual recounts are only intended to be used when some type of machine or electromechnical process is involved. App. at 1a.

6. In 1989, the Florida legislature amended the Election Code by adding section 101.112 (directed to county canvassing boards) which states, in pertinent part, the general rule set forth above regarding the seven-day deadline, but adds that "[i]f the returns are not received by the department by the time specified, such returns may be ignored and the results on file at that time may be certified by the department." *See id.*, § 102.112(1). The amendment also provided a $200 a day fine to be levied against the canvassing board members personally for late returns. *See id.*, § 102.112(2). This was done at the same time as the amendments to section 102.166, Florida Statutes, in response to the machine voting problems that occurred in the Mackay-Mack U.S. Senate race in 1988. *See infra* at 13-14, n.10.

Before final certification by the county canvassing board for any particular county, the candidates, their political parties or a political committee that supports or opposes an issue that appeared on the ballot are permitted to file a written request with the county canvassing board for a manual recount. *See id.* §§ 102.166(4)(a) & (b). If the county canvassing board authorizes the manual recount, the recount must include "at least three precincts and at least 1 percent of the total votes cast for such candidate or issue." *See id.* §§ 102.166(4)(c) & (d). If the initial manual recount indicates "an error in the vote tabulation which could affect the outcome of the election," the board could: (a) correct the error and recount the remaining precincts with the vote tabulation system; (b) request the department of state to verify the vote tabulation software; or (c) manually recount all ballots.

On November 7, 2000, voters across the nation cast their ballots for, among other offices, President and Vice President of the United States. In Florida, the initial returns from all the counties showed statewide that Governor George W. Bush was slightly ahead of Vice President Albert Gore, Jr. Because the difference was less than one-half of one percent, an automatic statewide recount was conducted by all counties the following day. *See id.* § 102.141(4). After the recount, Governor Bush maintained a narrow lead over the Vice President. On November 9, the Florida Democratic Executive Committee requested manual recounts in the following counties: Volusia, Palm Beach, Broward and Miami-Dade.

On November 13, 2000, the Palm Beach Canvassing Board ("Palm Beach") requested, in writing, that the Division issue a written opinion as to whether the Department of State or the Commission had the discretion to extend the seven-day statutory filing deadline for election returns. By separate

cover, Palm Beach also requested that the Division issue a written opinion as to when a county could authorize a manual recount of ballots.

Later that day, in response to a specific request from election officials, the Division issued two formal advisory opinions. *See* Fla. Stat. § 106.23. In response to the first request from Palm Beach, the Division issued Opinion DE 00-10 advising Palm Beach that election results not certified by 5 p.m. Tuesday, November 14 could not be counted in the certification of the statewide results. In response to the second request from Palm Beach, the Division issued Opinion DE 00-13 (App. at 1a) advising Palm Beach that the "error in vote tabulation" language in the statute that serves as the legal basis for a manual recount means "a counting error in which the vote tabulation system fails to count properly marked marksense or properly punched punchcard ballots."

Also on November 13, the Secretary notified all 67 county elections supervisors that the statutory deadline of 5 p.m. Tuesday, November 14 would not be extended. The Secretary further informed these parties that returns (other than overseas ballots) not filed by the deadline would not be included in the certification of statewide results.

The following day, in response to the requests from Palm Beach County officials, Florida's Attorney General, Bob Butterworth, issued a conflicting opinion, Opinion 00-65 (App. at 5a), advising Palm Beach that the "error in vote tabulation" means "a discrepancy between the number of votes determined by a voter tabulation system and the number of votes determined by a manual count of a sampling of precincts pursuant to section 102.166(4), Florida Statutes." App. at 11a.

Volusia County had previously filed a lawsuit in Leon County, seeking to enjoin the Secretary and the Commission from certifying election results without including returns filed after the seven-day statutory deadline. The Palm Beach County Canvassing Board, Vice President Gore and the Florida Democratic Party ("Democrats") intervened. After an initial hearing, Leon County Circuit Court Judge Terry P. Lewis directed the Secretary "to withhold determination as to whether or not to ignore late filed returns, if any, from Plaintiff Canvassing Boards, until due consideration of all relevant facts and circumstances consistent with the sound exercise of discretion." Bush App. at 50a.

The Secretary's first action in response to the order was to develop a set of evaluative criteria that would be used to decide whether to allow a late filing. First, a set of factors that could justify a late filing was developed. The existence of one or more of these factors, which were drawn from Florida elections case law, could have justified an allowance of a late filing. These factors (and their supporting case law) were:

- Whether there is any indication of voter fraud that could affect the outcome of the election. *In re: Protest of Election Returns*, 707 So. 2d 1170, 1172 (Fla. 3d DCA 1998); *Broward County Canvassing Board v. Hogan*, 607 So. 2d 508, 509 (Fla. 4th DCA 1992);

- Whether there was substantial noncompliance with statutory election procedures, causing reasonable doubt to exist as to whether the certified results express the will of the electorate. *Beckstrom v. Volusia County Canvassing Board*, 707 So. 2d 720 (Fla. 1998);

- Whether election officials had made a good faith effort to comply with the statutory deadline, but were prevented from doing so by an act of God or similar circumstance beyond their control.

The Secretary next determined, again based on a review of the pertinent case law, that the following election irregularities would *not* constitute a sufficient reason for violating the statutory deadline:

- Noncompliance with statutory election procedures and/or voter error, where there is a reasonable expectation that the results express the will of the voters. *Beckstrom*, 707 So. 2d at 725;

- The use of a ballot design that was confusing to some voters because of the location and alignment of candidates names, so long as a reasonable voter could make his or her choice by exercising reasonable time and study. *Nelson v. Robinson*, 301 So. 2d 508, 511 (Fla. 2d DCA 1974);

- Any other situation that presented "nothing more than a mere possibility that the outcome of the election would have been [a]ffected." *Hogan*, 607 So. 2d 508, 510 (Fl. 4th DCA 1992).

As before, the Secretary's decision was based primarily on reported election cases, which found similar circumstances to be insufficient to justify interference with certified election results. The factors applied thus reflected the law of Florida existing before the Supreme Court of Florida's November 21 decision. *See* App. at 27a-29a.

Thereafter, in accordance with Judge Lewis' order, the Secretary distributed a memorandum to all of Florida's 67 counties requesting that they provide a written statement, including the facts and circumstances that would justify any late filed returns by 2 p.m. Wednesday, November 15.

On Wednesday, November 15, the canvassing boards for Palm Beach County, Broward County, Miami-Dade County, and Collier County, responded to the Secretary's memorandum, each providing the facts and circumstances that they believed would provide justifications for the Secretary waiving or extending the statutory deadline to permit later changes to their already filed returns. After carefully reviewing each request in light of pre-established criteria based on long-standing Florida law, the Secretary made a determination that none of the facts before her justified a waiver or extension of the deadline. The Secretary and the Division both consistently took the position that voter error was not a basis for initiating a manual count nor to extend the seven day statutory deadline to do so. Volusia County completed its manual hand count before the 5 p.m. deadline on November 14, and those results were included in Volusia County's timely return.[7]

The Commission certified the timely-filed November 14, 2000, election results for all but the overseas ballots. The certification reflects 2,910,492 votes for Governor George W. Bush and Secretary Dick Cheney and 2,910,192 for Vice President Albert Gore, Jr. and Senator Joe Lieberman.

On November 16, the Democrats filed an Emergency Motion to Compel Compliance with and for Enforcement of Injunction

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7. Neither the Secretary nor the Division are permitted to go beyond the local canvassing board's certification. *See* Fla. Stat. § 102.31.

("Emergency Motion"), and asserted that the Secretary acted arbitrarily and in contempt of Judge Lewis' order by refusing to accept the returns filed after the statutory deadline.

On November 17, Judge Lewis denied the Emergency Motion, ruling that the Secretary had not acted arbitrarily, and that she "exercised her reasoned judgment to determine what relevant factors and criteria should be considered, applied them to the facts and circumstances pertinent to the individual counties involved, and made her decision." Bush App. at 43a. Later that day, the Supreme Court of Florida *sua sponte* entered an order enjoining the Secretary and Commission from finally certifying the results of the November 7 election and declaring a winner in Florida until further order. Bush App. at 39a.

On November 21, 2000, the Supreme Court of Florida reversed Judge Lewis, holding that manual recounts were not limited to instances of machine error, and that the Secretary had abused her discretion in not accepting returns that were not filed within the seven-day deadline set by the Legislature. In short, the Court enlarged the statutory Protest Period from seven days to 19 days, and shortened the Contest Period from 28 days to 16 days. The Court's holding changed the law in the state of Florida as it existed and was applied before November 7, 2000.

II.

THE FLORIDA ELECTION CODE PRIOR TO AND AFTER THE SUPREME COURT OF FLORIDA'S DECISION BELOW

Before the evening of November 21, 2000, when the Supreme Court of Florida issued the decision below, Florida's Election Code provided long-standing procedures requiring

the reporting of results by specified deadlines, for dealing with errors in vote tabulation, conducting manual recounts in certain limited circumstances involving mechanical or software failure in mechanical voting equipment, certifying electronic results and allowing affected voters to contest the results of an election. In addition, there was a system that accorded much less time to the Protest Period than it did to the Contest Period.

Under the Election Code as it previously existed, any affected voter, political party or candidate could protest election returns before certification of the election results. Fla. Stat. § 102.166(1). In the event of such a protest, the local elections canvassing board had to follow specific procedures to verify the accuracy of the returns. The procedures to be followed varied depending on whether paper ballots designed for hand counting, voting machines, or machine tabulated paper ballots were used. Fla. Stat. § 102.166(3).

As part of section 102.166, only a candidate or political party is also permitted to file a written request with the local canvassing board for a manual recount. Fla. Stat. § 102.166(4)(a). Provided the request was timely, the canvassing board was given discretion as to whether to conduct a manual recount, after conducting a proper, statutorily-defined, test of certain precincts to determine if there was a mechanical or software problem. Fla. Stat. § 102.166(4)(c). The Protest Period had to be completed, and the election results certified to the Florida Secretary of State within seven days of the election. Fla. Stat. § 102.111(1). Immediately upon such certification, the Commission was required to certify the elections results.[8] *Id.*

8. Florida law contemplated that the winner of the election would be declared on the seventh day following the election. Fla. Stat. § 102.111. For federal offices, however, a winner cannot (Cont'd)

The conclusion of this seven-day protest and certification process triggered the right of any affected voter or taxpayer, or as an unsuccessful candidate or party, to file an elections contest. Fla. Stat. § 102.168(1). Unlike the pre-certification protest procedure, the Contest Period allows for a full evidentiary record to be introduced, and all facts and circumstances surrounding the election to be examined in the courts. Fla. Stat. § 102.168. Further, an election contest allows for a single venue in the circuit court serving the state capitol for lawsuits stemming from a statewide election, Fla. Stat. § 102.1685, and grants broad authority to the court to fashion appropriate relief. *See id.* at 102.168(8). The Florida Legislature imposed no specific time limitations on a judicial elections contest, but imposed strict time limits on protests and recounts that precede a certification, which is the prerequisite to a contest.[9]

In response to a protest, Florida law, as it existed prior to November 21, allowed manual recounting to be conducted only in certain limited circumstances. Fla. Stat. § 102.166(5). Both the plain language and legislative history of Florida's

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be declared until three days later. That is, however, not a matter of state law. A consent decree between the state of Florida and the United States requires Florida to count absentee ballots from citizens living outside the United States that are received up to 10 days following the election. The consent decree was entered into following the enactment of the seven-day certification provisions in the Florida Election Code.

9. The Florida Legislature's intent to have the protest completed within seven days is exemplified by the fact that it imposed strict financial penalties on local canvassing board members who failed to submit timely returns and required the Commission to ignore any counties that failed to file returns within seven days and certify the election results based solely on those returns that are timely filed. Fla. Stat. § 102.112(1).

election statutes indicate that a manual recount of the ballots in a county was proper only when there has been a failure of the vote tabulation system or as required by a circuit court exercising jurisdiction in a properly filed elections contest action.[10] Failure

10. The provisions of section 102.166, Florida Statutes, at issue were enacted by the Florida Legislature in 1989 in response to concerns about computer failure in elections and the use of unreliable software to tabulate votes. Ch. 89-348, § 15 Laws of Florida. These concerns had been raised in the 1988 race for the United States Senate between Buddy MacKay and Connie Mack and in subsequent news articles. The legislature enacted sections 102.166(4)-(10), Florida Statutes, to address these concerns as part of what was called the "Voter Protection Act." The Senate Staff Analysis and Economic Impact statement for the Voter Protection Act noted:

> An incident of mechanical problems with an electronic voting system occurred in Bradenton, Florida where a seventh of the county's precincts had to be counted twice in one election since the ballots were soggy, became warped and were mangled by the voting equipment. Also, an apparent software "glitch" or error was responsible for an incident in Ft. Pierce when a machine would count the Democratic votes, but would not accept Republican ones.
>
> Other horror stories related to electronic voting systems have been reported on in the media, but in testimony before the Joint Committee on Information Technology Resources in 1989, supervisors of elections pointed out that there can be problems with any kind of voting system. However, many local election officials would agree that state certification procedures and local logic — and — accuracy tests provide a reasonable assurance that "electronic" elections are honestly counted. It is generally agreed that *additional steps* could be taken in Florida *to improve security procedures*, while not hampering the already cumbersome elections process, would enhance, the public's confidence in our voting system.

App. at 15a-16a (emphasis added).

(Cont'd)

of certain voters to properly execute their ballots was not a basis for conducting a manual recount, although this issue could be raised in a post-certification elections contest.[11]

Florida has never recognized a common-law right to protest election results, much less to require manual recounting of machine ballots. Prior to November 21, the right to a manual recount existed only to the extent provided by the Legislature. Florida Statutes section 102.166(5) allowed such a recount *only* when there had been an "error in vote tabulation." This term had consistently been interpreted, prior to November 21, to mean a failure of the tabulation equipment to count properly executed

(Cont'd)

As this legislative history indicates, the statute was intended to provide an alternate recounting procedure to be used in situations in which mechanical or computer problems caused tabulation equipment to fail to function as intended. The legislature never intended for manual recounts to be used to evaluate ambiguous ballots that *voters* failed to properly execute. Consistent with the legislative intent the Division of Elections formal advisory opinion left open the possibility of a full manual recount, but precluded a recount to assign votes to candidates based on improperly executed ballots that cannot be read by properly operating tabulation equipment.

11. The Division Opinion is an administrative interpretation of the statutes within its subject matter jurisdiction and is binding on subordinate agencies such as the Board. This opinion "remains binding until properly amended or revoked by the Division itself, or invalidated by a court having jurisdiction of the matter." *Smith v. Crawford*, 645 So. 2d 513, 521 (Fla. 1st DCA 1994); *see also Krivanek v. Take Back Tampa Political Committee*, 625 So. 2d 840, 844 (Fla. 1993). In contrast, the Board was *not* bound to adhere to the Attorney General's opinion. In fact, it was questionable whether the Attorney General even had the authority to issue an opinion on an election issue, given the specific allocation of this function to the Division of Elections in section 106.23(2).

ballots.[12] *Id*. Thus, when voters failed to mark ballots correctly, there had been no failure in their tabulation under Florida law, and no manual recount was authorized. *Id.*

The Supreme Court of Florida's November 21 decision has made a number of changes in Florida's election laws, setting aside some provisions, and implementing others. It has also recognized equitable principals that take precedence over statutory provisions and the exercise of discretion by the Secretary.

First, the requirement that tabulation of election results be completed within seven days has been eliminated. In its place there is a new, judicially-created time limitation

12. In the weeks before the November 7, 2000, general election, each registered voter in Florida was provided with a sample ballot and detailed instructions on how to vote according to the method used in his or her precinct. Additionally, a copy of the instructions was placed prominently in each voting booth. *See* Fla. Stat. § 101.46. In those districts using punch cards, the instructions explained how a voter was to select and punch out the appropriate chad on the ballot. App. at 25a. The instructions included this specific direction:

> **AFTER VOTING, CHECK YOUR BALLOT CARD TO BE SURE YOUR VOTING SELECTIONS ARE CLEARLY AND CLEANLY PUNCHED AND THERE ARE NO CHIPS LEFT HANGING ON THE BACK OF THE CARD.**

Id. When voters followed the instructions, including the removal of any loose chips left attached to their ballots, the automatic tabulation accurately tabulated the ballots. There is no contention otherwise. Only the ballots of those voters who, by their own actions, failed to clearly indicate their elective choices, as directed, would be affected by the manual recount at issue.

that allows at least 19 days to complete the Protest Period before certification, and possibly more when an election protest and request for manual recount have been filed. Bush App. at 38a. Local canvassing board members are now under no duty to comply with the strict time limitations that previously existed and can no longer be fined or have their returns ignored for failing to file certified returns. *Id.*

Second, local canvassing boards may now file amended returns after the statutory deadline, even if they had properly filed returns before the deadline. *Id.* The Secretary of State now has no discretion to reject any such amendment, unless it is so late that it will preclude a candidate or voter from contesting the election or jeopardize the ability of the state to appoint presidential electors within the time limitations of federal law. Bush App. at 37a. Before the November 21 decision, there was no provision in Florida statutory law that allowed returns to be amended, much less amended after the statutory time limitation for final certification and declaration of the winner has passed. There was also no statutory provision that required the Secretary to accept late-filed returns, or limited late filing specifically to situations where the federal time limitations jeopardize Florida's electoral votes. Indeed the existing Florida law required just the opposite: "If the county returns are not received by the Department of State by 5 p.m. of the seventh day following an election, all missing counties shall be ignored, and the results shown by the returns on the file shall be certified."[13] Fla. Stat. § 102.111(1). Late returns, if they

13. This statute governs the Elections Canvassing Commission and sets forth its duties with respect to acceptance of election returns and certification of election results. A related provision, which governs local canvassing boards, states that "[r]eturns must be filed by 5 p.m. on the 7th day following the . . . general election," and puts those boards on notice that "[i]f the returns are not received (Cont'd)

would affect the outcome of the election, could be added only if ordered by a circuit court in an election contest action. Fla. Stat. §§ 102.168(3)(e) and (8). Before November 21, this statute was consistently interpreted to require submittal of returns within seven days. *See Chappel v. Martinez*, 536 So. 2d 1007, 1009 (Fla. 1984) (requiring substantial compliance with the deadline and holding that telephone transmittal before the deadline sufficed).

Third, the Commission is now precluded from certifying election results on the seventh day following the election, as previously required under Florida Statutes sections 102.111, 102.121 and 102.131. Indeed, even where certified returns were filed by all counties within the time limitations that existed before the November 21 decision, the Commission must now wait at least until November 26 to certify the results of the election.

Fourth, the time frame for an election contest, the only procedure available to individual voters to challenge the outcome of the election, is now drastically shorter. Under the prior law, the period for filing a contest would have begun with the final certification of results on November 17, and the contest proceeding could have extend until December 12, the

(Cont'd)
by the department by the time specified, such returns may be ignored and the results on file at that time may be certified by the department." Fla. Stat. § 102.112(1). While this provision may grant the Secretary of State some discretion in deciding whether to accept late returns. The construction by the Supreme Court of Florida to absolutely require late returns to be accepted or to authorize the post-deadline amendment of returns already filed is clearly a change in what might otherwise be understood from reading the provision, even in connection with section 102.112, Florida Statutes.

federal deadline for appointment of presidential electors. Now, any contest cannot begin until the recounts are completed and the results certified. At the earliest, this will not occur until November 28, cutting the contest period from 25 days — already an extremely short period in which to develop a case, conduct discovery, have a trial, and pursue any subsequent appeals — to a mere 16 days.

Finally, but perhaps most importantly, manual recounting may now be used in a significantly broader way than previously available. Prior to November 21, in the absence of a judicial decree rendered in an election contest action, manual recounting was allowed only in the case of mechanical, software or other similar failure in the automated vote tabulation and were considered dehors the common law. The Supreme Court of Florida has now recognized that these rights are equitably required and grounded in Florida constitutional law.

Under Florida Statutes section 102.166(5) a manual recount was a last-resort remedy to be used in areas with automated tabulation systems only when there was no way to mechanically tabulate the ballots. When a sample manual recount indicated a problem with the vote tabulation system, the local canvassing board first attempted to correct the error and recount the remaining precincts with the system under subsection (5)(a). If the error could not be corrected, a board was allowed to request the Department of State to verify the tabulation system under subsection (5)(b). Finally, if the system could not be corrected or verified to work properly, then as a last resort, the board would have manually recounted the ballots under subsection (5)(c). There was never any indication that Florida Statutes section 102.166(5) allowed voter errors caused by improperly marked or punched ballots to be selectively corrected. The statute was enacted to provide a remedy when a vote tabulation system failed to read

properly marked ballots, not to provide local canvassing boards the unbridled discretion to choose the method of tabulating votes on an *ad hoc* basis after an election was completed.

As a result of the Supreme Court of Florida's decision, the Secretary, the Commission and Florida's 67 local elections canvassing boards will now treat the election certification process quite differently than they would have previously:

- Where the Secretary would have previously rejected late filed election returns, she is now required to accept those returns, so long as the late filing does not violate the judicially created test of being "so late that their inclusion will preclude a candidate from contesting the certification or preclude Florida's voters from participating fully in the federal electoral process;"

- Where the Commission would have certified the statewide election on November 17 on the certified returns filed by all of Florida's 67 counties, the Commission must now wait on the results of manual recounts conducted in selected areas, delaying final certification until at least November 26 that must include amendments to the November 14 filing other than overseas ballots;

- Where local canvassing boards were previously precluded from conducting manual recounts in the absence of an error in the vote tabulation system, they now will conduct recounts in almost any circumstance;

- Where each county canvassing board would have submitted only one final set of returns, the local canvassing boards may now conduct a series of recounts and amend their prior certification for some time after the deadline to certify has passed; and

- Where a uniform system of automated counting was previously in place, Florida's votes, including votes for the electoral college, will now be decided based on standards developed by individual county canvassing boards in selected areas of the state.

Dated this 24th day of November, 2000.

Respectfully submitted,

DEBORAH K. KEARNEY
General Counsel
KEREY CARPENTER
Assistant General Counsel
Florida Department of State
PL-02 The Capitol
Tallahassee, FL 32399-0250
(850) 414-5536

BILL L. BRYANT, JR.
KATZ, KUTTER, HAGGLER,
ALDERMAN, BRYANT & YON, P.A.
Highpoint Center, 12th Floor
106 East College Avenue
Tallahassee, FL 32301
(850) 224-9634

JOSEPH P. KLOCK, JR.
Counsel of Record
JOHN W. LITTLE, III
J.B. MURRAY
ARTHUR R. LEWIS, JR.
GABRIEL E. NIETO
STEEL HECTOR & DAVIS LLP
200 South Biscayne Blvd.
Suite 4000
Miami, FL 33131-2938
(305) 577-7000

Attorneys for Respondents
Katherine Harris, Florida Secretary of State, and Katherine Harris, Laurence C. Roberts, and Bob Crawford, as Members of the Florida Elections Canvassing Commission

APPENDIX

APPENDIX A — FLORIDA DEPARTMENT OF STATE, DIVISION OF ELECTIONS OPINION NO. DE 00-13

FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State
DIVISION OF ELECTIONS
The Capitol • Room 1801
Tallahassee, Florida 32399-0250
(850) 488-7690
FAX: (850) 488-1768
http://www.dos.state.fl.us
E-Mail: *election@mail.dos*

November 13, 2000

The Honorable Charles E. Burton
Chairperson
Palm Beach County Canvassing Board
Palm Beach County Courthouse
West Palm Beach, Florida 33401

DE 00-13
Manual Recount Procedures and
Partial Certification of County Returns
§§ 102.166(5) and 102.151, Fla. Stat.

Dear Judge Burton:

This is in response to your request for an opinion. You are chairperson of the Palm Beach County Canvassing Board and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has the authority to issue an opinion to you. Essentially, you ask:

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1. Would a discrepancy between the number of votes determined by a tabulation system and by a manual recount of four precincts be considered an "error in voting tabulation" that could affect the outcome of an election within the meaning of section 102.166(5), Florida Statutes, thereby enabling the canvassing board to manually recount ballots for the entire county?

2. May a county canvassing board do a partial certification of the votes pursuant to section 102.151, Florida Statutes, for the November 7, 2000 election that excludes the votes for the candidates of the presidential election?

With regard to your first question, section 102.166(5), Florida Statutes, provides that if the manual recount indicates an error in the vote tabulation which could affect the outcome of the election, the county canvassing board shall: (a) correct the error and recount the remaining precincts with the vote tabulation system; (b) request the Department of State to verify the tabulation software; or (c) manually recount all ballots.

An "error in the vote tabulation" means a counting error in which the vote tabulation system fails to count properly marked marksense or properly punched punchcard ballots. Such an error could result from incorrect election parameters, or an error in the vote tabulation and reporting software of the voting system. Therefore, unless the discrepancy between the number of votes determined by the tabulation system

Appendix A

and by the manual recount of four precincts is caused by incorrect election parameters or software errors, the county canvassing board is not authorized to manually recount ballots for the entire county nor perform any notion specified in section 102.166(5)(a) and (b), Florida Statutes.

With regard to your second question, the answer is yes. The county canvassing board may do a partial certification of the votes pursuant to section 102.151, Florida Statutes, for the November 7, 2000 election that excludes the results of the presidential election.

SUMMARY

An "error in the vote tabulation" means a counting error in which the vote tabulation system fails to count properly marked marksense or properly punched punchcard ballots. Such an error could result from incorrect election parameters, or an error in the vote tabulation and reporting software of the voting system. Therefore, unless the discrepancy between the number of votes determined by the tabulation system and by the manual recount of four precincts is caused by incorrect election parameters or software errors, the county canvassing board is not authorized to manually recount ballots for the entire county nor perform any action specified in section 102.166(5)(a) and (b), Florida Statutes. The county canvassing board may do a partial certification of the votes pursuant to section 102.151, Florida Statutes, for the November 7, 2000 election that excludes the results for the presidential election.

Appendix A

Sincerely,

s/ L. Clayton Roberts
L. Clayton Roberts
Director, Division of Elections

Prepared by:
Kristi Reid Bronson
Assistant General Counsel

LCR/KRB/st

APPENDIX B — OPINION OF THE FLORIDA ATTORNEY GENERAL NO. 00-65

STATE OF FLORIDA
OFFICE OF THE ATTORNEY GENERAL
ROBERT A. BUTTERWORTH

November 14, 2000

The Honorable Charles E. Burton 00-65
Chair, Palm Beach County Canvassing Board
County Courthouse
West Palm Beach, Florida 33401

Dear Judge Burton:

On behalf of the Palm Beach County Canvassing Board, you have asked this office's opinion as to the meaning of "error in voting tabulation which could affect the outcome of" an election as that phrase is used in section 102.166(5), Florida Statutes.

I am answering your request fully mindful that just yesterday the Division of Elections rendered Division of Elections Opinion 00-11 to the Chairman of the Republican Party, interpreting the duties of a county canvassing board pursuant to section 102.166(5), Florida Statutes.[1] Because the Division

1. The validity of the opinion of the Division of Elections is questionable since it appears to exceed the authority granted to the division by Florida law. Section 106.23(2), Florida Statutes, provides the division with the authority to render advisory opinions interpreting the election code to, among others, a political party relating to actions such party has taken or proposes to take. Division of Elections Opinion 00-11, however, erroneously seeks to advise a political party about the responsibilities of the supervisor of elections and local canvassing board under section 102.166(5).

of Elections opinion is so clearly at variance with the existing Florida statutes and case law, and because of the immediate impact this erroneous opinion could have on the on-going recount process, I am issuing this advisory opinion.

Section 102.166(4), Florida Statutes, permits a local canvassing board, upon request of a candidate or political party, to authorize a manual recount to include at least three precincts and at least 1 percent of the total votes cast for such candidate.[2] Section 102.166(5), Florida Statutes, provides "[i]f the manual recount indicates an error in vote tabulation which could affect the outcome of the election, the county canvassing board shall" among other options, manually recount all ballots.

Division of Election Opinion 00-11 concludes that the language "error in the vote tabulation" in section 102.166(5), Florida Statutes, refers only to a counting error in the vote tabulation system. The opinion concludes that the inability of a voting system to read an "improperly marked marksense or improperly punched punchcard ballot" is not an "error in the voter tabulation system" and would not, therefore, trigger a recount of all ballots.

The division's opinion is wrong in several respects.

The opinion ignores the plain language of the statute which refers not to an error in the vote tabulation system but to an error in the vote tabulation. The Legislature has used the

2. *See*, § 102.166(4)(d), Fla. Stat., stating that the person requesting the recount "shall choose three precincts to be recounted."

terms "vote tabulation system" and "automatic tabulating equipment" elsewhere in section 102.166, Florida Statutes, when it intended to refer to the system rather than the vote count. Yet the division, by reading "vote tabulation" and "vote tabulation system" as synonymous, blurs the distinctions that the Legislature clearly delineated in section 102.166.[3]

The error in vote tabulation might be caused by a mechanical malfunction in the operation of the vote counting system, but the error might also result from the failure of a properly functioning mechanical system to discern the choices of the voters as revealed by the ballots. The fact that both possibilities are contemplated is evidenced by section 102.166(7) and (8), Florida Statutes. While subsection (8) addresses verification of tabulation software, subsection (7) provides procedures for an examination of the ballot by the canvassing board and counting teams to determine the voter's intent.

The division's opinion, without authority or support, effectively nullifies the language of section 102.166(7), Florida Statutes. Nothing in subsection (7) limits its application to the recount of all ballots. Rather, the procedures for a manual recount in subsection (7) equally apply to the initial sampling manual recount authorized in section 102.166(4)(d). Section 102.166(7)(b) states:

3. *See, e.g., Department of Professional Regulation, Board of Medical Examiners v. Durrani*, 455 So. 2d 515 (Fla. 1st DCA 1984) (legislative use of different terms in different portions of same statute is strong evidence that different meanings were intended).

> If a counting team is unable to determine a voter's intent in casting a ballot, the ballot shall be presented to the county canvassing board for it to determine the voter's intent.

Yet under the division's interpretation, such language is rendered superfluous. It is fundamental principle of statutory construction that statutory language is not to be assumed to be surplusage; rather a statute is to be construed to give meaning to all words and phrases contained within statute.[4]

Section 102.166(7) clearly recognizes that an examination by a person of the ballot will occur to determine whether the voter complied with the statutory requirement, *i.e.*, marked the marksense or punched the punchcard ballot. The statutes do not specify how a punchcard must be punched. Clearly, there may be instances where a punchcard or marksense ballot was not punched or marked in a manner in which the electronic or electromechanical equipment was able to read the ballot. Such a deficiency in the equipment in no way compromises the voter's intent or the canvassing board's ability to review the ballot and determine the voter's intent. In fact, section 101.5614(5) and (6), Florida Statutes, contemplate that such an examination will occur. Section 101.5614(6) provides that the ballot will not be counted if it is impossible to determine the elector's choice or the elector

4. *See, Terrinoni v. Westward Ho!*, 418 So. 2d 1143 (Fla. 1st DCA 1982); *Pinellas County v. Woolley*, 189 So. 2d 217 (Fla. 2d DCA 1966); Ops. Att'y Gen. Fla. 95-27 (1995); 91-16 (1991) (operative language in a statute may not be regarded as surplusage); 91-11 (statute must be construed so as to give meaning to all words and phrases contained within that statute).

marks more than one name than there are persons to be elected.

Clearly, the manual count of the sampling precincts which reveals a discrepancy between votes counted by the automatic tabulating equipment and valid ballots which were not properly read by the equipment but which constitute ballots in which the voter complied with the statutory requirements and in which the voter's intent may be ascertained, constitutes an "error in vote tabulation." If the error is sufficient that it could affect the outcome of the election, then a manual recount of all ballots may be ordered by the county canvassing board.

The division's opinion fails to acknowledge the longstanding case law in Florida which has held that the intent of the voters as shown by their ballots should be given effect. Where a ballot is marked so as to plainly indicate the voter's choice and intent, it should be counted as marked unless some positive provision of law would be violated.[5]

As the state has moved toward electronic voting, nothing in this evolution has diminished the standards first articulated in such decisions as *State ex rel. Smith v. Anderson*[6] and

5. *See, State ex rel. Smith v. Anderson*, 8 So. 1 (Fla. 1890); *Darby v. State*, 75 So. 411 (Fla. 1917); *State ex rel. Nuccio v. Williams*, 120 So. 310 (Fla. 1929) (in performing their duty of counting, tabulating, and making due return of ballots cast in an election, the inspectors may, in some cases of ambiguity or apparent uncertainty in the name voted for, determine, from the fact of the ballot as cast, the person for whom a vote was intended by the voter).

6. 8 So. 1 (Fla. 1890).

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State ex rel. Nuccio v. Williams[7] that the intent of the voter is of paramount concern and should be given effect if the voter has complied with the statutory requirement and that intent may be determined. For example, if a voter has clearly, physically penetrated a punchcard ballot, the canvassing board has the authority to determine that the voter's intention is clearly expressed even though such puncture is not sufficient to be read by automatic tabulating equipment.

In *State ex rel. Carpenter v. Barber*,[8] the Court stated:

> The intention of the voter should be ascertained from a study of the ballot and the vote counted, if the will and intention of the voter can be determined, even though the cross mark 'X' appears before or after the name of said candidate. *See Wiggins, Co. Judge v. State ex rel. Drane*, 106 Fla. 793, 144 So. 62; *Nuccio v. Williams*, 97 Fla. 159, 120 So. 310; *State ex rel. Knott v. Haskell*, 72 Fla. 176, 72 So. 651.

The Florida Statutes contemplate that where electronic or electromechanical voting systems are used, no vote is to be declared invalid or void if there is a clear indication of the intent of the voter as determined by the county canvassing board.[9]

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7. 120 So. 310 (Fla. 1929).

8. 198 So. 49, 51 (Fla. 1940).

9. *See, Wiggins v. State ex rel. Drane*, 144 So. 62, 63 (Fla. 1932) (separate tabulation and return of what may be deemed regular (Cont'd)

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In light of the plain language of section 102.166(5), Florida Statutes, authorizing a manual recount of all ballots when the sampling manual recount indicates an error in vote tabulation which could affect the outcome of the election and the general principles of election law, I must express my disagreement with the conclusions reached in Division of Election Opinion 00-11. Rather I am of the opinion that the term "error in voter tabulation" encompasses a discrepancy between the number of votes determined by a voter tabulation system and the number of votes determined by a manual count of a sampling of precincts pursuant to section 102.166(4), Florida Statutes.

Sincerely,

s/ Robert A. Butterworth
Robert A. Butterworth
Attorney General

RAB/t

(Cont'd)
ballots does not mean that only regular ballots are to be counted; if the marking of the ballot should be irregular, but the voter casting such ballot has clearly indicated by an X-mark the candidate of his choice, the ballot should be counted as intended).

Appendix B

MEMORANDUM

To: Supervisor of Elections
Dade County
Palm Beach County
Broward County

From: Clay Roberts
Director
Division of Elections

Re: Amended certification of returns

Date: November 14, 2000

As of 5 p.m. today, the Division of Elections has received certification of returns from all 67 Florida counties. The usual practice of the state elections canvassing commission is to finally certify these returns as soon as the compilations are completed by the staff of the division. However, we understand your county may plan to conduct a manual recount continuing beyond today's 5 p.m. deadline.

Leon County Circuit Court Judge Terry Lewis confirmed today that the Secretary of State has the discretion to consider any request to amend certification of returns after the deadline. In order to properly exercise that discretion, the Secretary requires that you forward to her by 2 p.m. Wednesday, November 15, 2000 a written statement of the facts and circumstances that cause you to believe that a change should be made to what otherwise would be the final certification of the statewide vote, composed of the tallies received by 5 p.m. today, plus the total of the votes received from overseas ballots received by the counties by midnight on Friday.

APPENDIX C — FLORIDA SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT TO COMMITTEE SUBSTITUTE FOR SENATE BILL 499 (1989)

BILL NO. CS/SB 499

DATE: April 13, 1989

STATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

STAFF DIRECTOR	REFERENCE	ACTION
Stephens	1. EE	Fav/CS
	2. GO	
	3. AP	

SUBJECT:

Elections/Voting Equipment
and Systems

BILL NO. AND SPONSOR:

CS/SB 499 by Committee on Ethics & Elections and Senators Stuart, W.D. Childers, Johnson, Gardner and Brown

I. SUMMARY:

A. Present Situation:

The Electronic Voting Systems Act is comprised of sections 101.5601 through 101.5615, F.S., which

contain the majority of the Election Code provisions relating to electronic voting. The purpose of these sections is to authorize the use of electronic and electromechanical voting systems. They provide definitions; require the Department of State (DOS) to examine and approve voting systems; authorize DOS to prescribe rules to maintain correctness, impartiality and efficiency in voting procedures and to establish minimum security guidelines; specify certain voting procedures and ballot requirements; provide for inspection of ballots by an election board; call for instructions to be given to voters; require testing of tabulating equipment and examination of equipment during voting; describe the process for canvass of returns; and provide for recounts.

Section 101.5604, F.S., provides that the board of county commissioners of any county may obtain and use electronic or electromechanical voting systems approved by DOS. Section 101.5605, F.S., requires DOS to examine all electronic or electromechanical voting systems submitted to it and determine whether or not they comply with requirements of § 101.5606, F.S. Section 101.5606, F.S., requires such voting systems to be constructed so that voting will be in secrecy; each person may vote for or against persons and offices to which he is entitled to vote; the equipment will reject extra votes exceeding that allowed; it is capable of correctly counting votes; there is a method for write-in voting; it is capable of tallying votes; it is capable of automatically producing precinct totals in printed, marked or

punched form; and it will permit a voter to change his vote before registering the vote.

Section 101.5607, F.S., states that each supervisor of elections using an electronic or electromechanical voting system is required to establish written procedures to assure accuracy and security of the voting procedures in his county and submit them to DOS for review and approval. Section 101.5612, F.S., requires that the supervisor of elections test the automatic tabulating equipment within 10 days of the election to ascertain that the equipment will correctly count the votes cast. Section 101.5613, F.S., requires a member of the election board to occasionally examine the face of the voting device during voting to determine that it has not been damaged or tampered with. Chapter 1C-7.015, F.A.C., establishes minimum security procedures for electronic or electromechanical voting systems.

Recent media articles have focused attention on security of electronic voting systems. With over half of the votes in the nation being counted electronically, the accuracy of electronic voting systems is paramount. The questions most often asked are "Do computerized systems count accurately? Are they vulnerable to fraud?" A November 7, 1988, article entitled "Annals of Democracy" in the *New Yorker* stated that errors and accidents in computerized elections have occurred across the country and have increased in recent years. An incident of mechanical problems with an

electronic voting system occurred in Bradenton, Florida where a seventh of the county's precincts had to be counted twice in one election since the ballots were soggy, became warped and were mangled by the voting equipment. Also, an apparent software "glitch" or error was responsible for an incident in Ft. Pierce when a machine would count the Democratic votes, but would not accept Republican ones.

Other horror stories related to electronic voting systems have been reported in the media, but in testimony before the Joint Committee on Information Technology Resources in 1989, supervisors of elections pointed out that there can be problems with any kind of voting system. However, many local election officials would agree that state certification procedures and local logic-and-accuracy tests provide a reasonable assurance that "electronic" elections are honestly counted. It is generally agreed that additional steps which could be taken in Florida to improve security procedures, while not hampering the already cumbersome elections process, would enhance the public's confidence in our voting system.

Forty-one counties in Florida utilize computerized voting systems. A report entitled *THE STATE'S INFORMATION POLICY: Response to Changes in an Electronic Age*, dated March, 1989, written by the Florida Legislature Joint Committee on Information Technology Resources, addressed the security of electronic voting systems in the state and made a number of recommendations. Some of these recommendations are embodied in SB 499.

DOS currently employs one person, full-time, to examine and certify electronic and electromechanical voting systems for use in the state.

B. Effect of Proposed Changes:

Section 1. The act is called the "Voter Protection Act."

Section 2. The Secretary of State is responsible for providing technical assistance to the supervisors of elections on voting systems.

Section 3. "Voting system" is defined as a method of casting and processing votes that functions wholly or partly by use of mechanical, electromechanical, or electronic apparatus or by use of paper ballots and includes, but is not limited to, the procedures for casting and processing votes and the programs, operating manuals, tabulating cards, printouts, and other software necessary for the system's operation.

Section 4. Section 101.015 is created. DOS is directed to adopt rules which establish minimum standards for hardware and software for voting systems. Such rules shall contain standards for functional requirements, performance levels, physical and design characteristics, documentation requirements, and evaluation criteria. Every other year DOS shall review the rules to determine their adequacy and effectiveness in assuring that elections are fair and impartial. DOS is also authorized to adopt rules to achieve and maintain the maximum degree

of correctness, impartiality, and efficiency of the procedures of voting, and rules to establish minimum security standards for voting systems. Supervisors of elections must establish written procedures to assure accuracy and security in their counties, which will be reviewed every other year by DOS. Supervisors shall submit any revisions to their security procedures to DOS before they take effect. All voting systems purchased on or after January 1, 1990, must meet the minimum standards established by this section and subsequent rules. All voting systems in use on or after July 1, 1993, must meet the minimum standards.

Section 5. The term "voting equipment" in § 101.292, F.S., is redefined to include ballot cards.

Section 6. DOS would need to review all purchase contracts for voting equipment. DOS may, with the assistance of the Department of General Services, negotiate and execute purchasing agreements and contracts under which any governing body may purchase any element of a voting system.

Section 7. Counties and municipalities are authorized to provide for experimental use of any voting system, rather than voting machine.

Section 8. "Software" is defined as the programs and routines used to employ and control the capabilities of data processing hardware, including, without limitation, operating systems, compilers, assemblers,

utilities, library routines, maintenance routines, applications, and computer networking programs.

Section 9. Voting systems submitted to DOS for testing shall have the software required for the system's operation tested.

Section 10. No electronic or electromechanical voting system shall be approved by DOS unless it is capable of providing records from which the operation of the voting system may be audited.

Section 11. Copies of the program codes and user and operator manuals and copies of all software and other pertinent information required by DOS relating to an approved electronic or electromechanical voting system must be filed with DOS by the supervisor of elections at the time of purchase or implementation. Any such information or materials not on file with DOS may not be used in an election. The supervisor of elections shall send, by certified mail, to DOS, a copy of the tabulation program which was used in any logic and accuracy testing of tabulating equipment, within 24 hours following such test. DOS has the authority to review the voting system of any county to ensure compliance with the Electronic Voting Systems Act. Software on file with DOS which is obtained from an agency under a licensing agreement which prohibits its disclosure and which software is a trade secret, and agency-produced data processing software which is sensitive is exempt from open public record requirements.

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DOS may develop software for use with an electronic or electromechanical voting system. Such software developed by DOS is an open public record.

Section 12. DOS is required to adopt rules prescribing standards for ballots used in electronic or electromechanical voting systems. Such standards shall ensure that ballots are counted in a uniform and consistent manner and shall include, without limitation, standards for the physical characteristics of ballots, physical characteristics of ink for ballots, and printing and scoring of ballots.

Section 13. In recounting ballots, one method would be the use of the automatic tabulating equipment.

Section 14. Section 101.591, F.S., is created to require DOS to audit, at least every five years, the voting system in each county. After completion, a copy of the audit is to be furnished to the supervisor of elections and the board of county commissioners. The audit shall consist of a study and evaluation of the voting system used during any election to provide reasonable assurance that the system is properly controlled, can accurately count votes, provides adequate safeguards against unauthorized manipulation and fraud, and complies with the requirements of law and rules of DOS.

Section 15. Updated procedures are provided for the canvassing board to verify election returns in the event that a protest of election returns is filed. Any

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candidate whose name appeared on the ballot, any political committee supporting or opposing an issue on the ballot, or any political party whose candidates' names appeared on the ballot may file a written request with the county canvassing board for a manual recount. Such request must be filed with the canvassing board prior to the time the canvassing board adjourns or within 5 days after midnight of the date the election was held, whichever is later. The county canvassing board may authorize a manual recount. If a manual recount is authorized, the county canvassing board shall make a reasonable effort to notify each candidate whose race is being recounted of the time and place of such recount. The manual recount must include at least three precincts and at least one percent of the total votes cast for such candidate or issue. The person who requested the recount shall choose three precincts to be recounted, and the county canvassing board may choose additional precincts to be recounted. In the event that the manual recount indicates an error in the vote tabulation which could affect the outcome of the election, the county canvassing board shall recount the remaining precincts with the vote tabulation system, request DOS to verify the tabulation software, or manually recount all ballots. Any manual recount shall be open to the public.

The procedures for a manual recount are: the county canvassing board shall appoint counting teams, each consisting of two electors. Preferably, these two people would represent two different political parties.

If the team of counters cannot determine a voter's intent in casting a ballot, the ballot shall be presented to the county canvassing board for a determination. In the event that a county canvassing board determines the need to verify the tabulation software, the board shall make such request in writing to DOS. When DOS verifies such software, DOS shall compare the software used to tabulate the votes with the software on file with DOS and check the election parameters. DOS is required to respond to the county canvassing board within three working days.

Section 16. A Bureau of Voting Systems Certification within the Division of Elections of DOS is created. This Bureau would provide technical support to supervisors of elections and be responsible for voting system standards and certification. Sixteen initial positions are established in the Bureau and $669,000 is appropriated to the Division of Elections from the General Revenue Fund.

Section 17. Sections 1-15 take effect January 1, 1990. Sections 16 and 17 take effect July 1, 1989, or upon becoming a law, whichever occurs later.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

A Bureau of Voting Systems Certification within the Division of Elections of DOS is created. Sixteen initial positions are established in the Bureau, and the sum of $669,000 is appropriated to the Division of Elections from the General Revenue Fund for fiscal year 1989-90.

Local governments may experience reduced costs for acquiring voting systems, based upon the Department of State negotiating volume purchasing agreements. Local governments could realize a savings if the DOS develops software for use by the counties, at the cost of duplication. Department of General Services would be able to assist DOS in voting system purchase contracts without additional resources.

III. COMMENTS:

1. The companion bill is HB 1529.

2. An early draft of this bill, before it was filed, financed the new Bureau of Voting Systems Certification with an election security assessment paid at the time of qualifying, which was 2% of the annual salary of the office sought. Another funding alternative would be a combination of general revenue funding and a smaller election security assessment.

IV. AMENDMENTS:

None.

Appendix C

STATEMENT OF SUBSTANTIAL CHANGES
CONTAINED IN COMMITTEE SUBSTITUTE FOR
Senate Bill 499

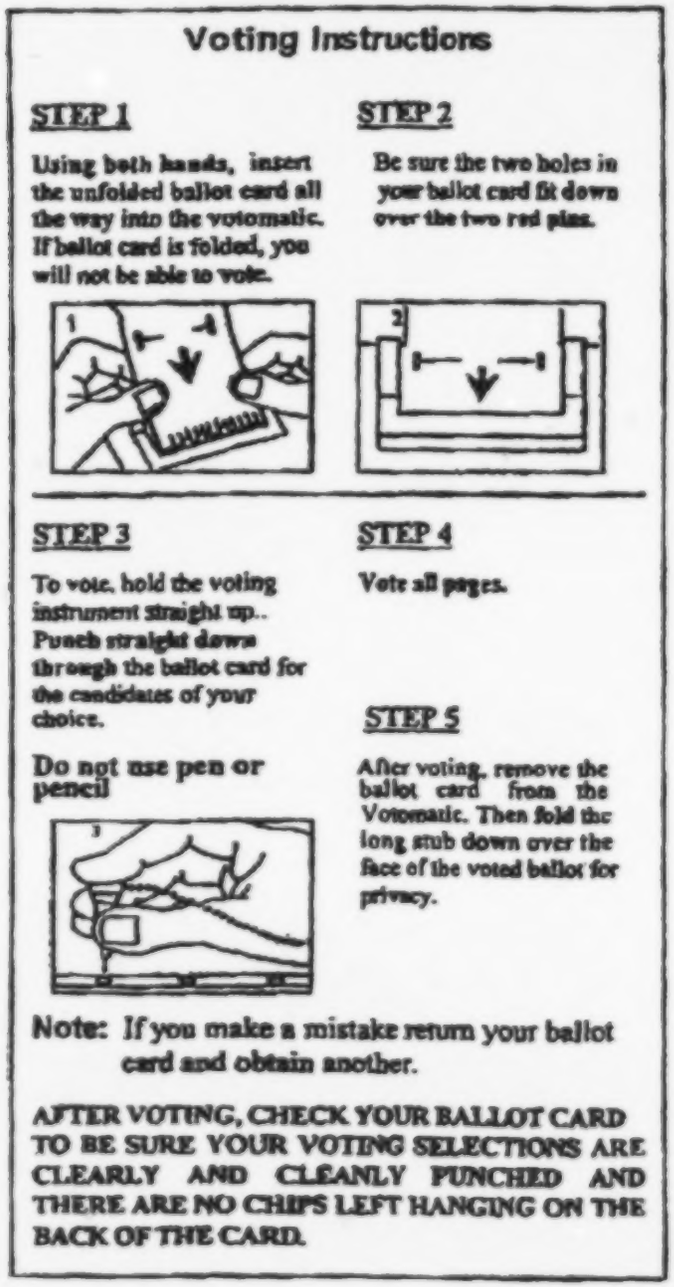
Using automatic tabulating equipment would be one method of recounting ballots. When ballot recounting was authorized, the county canvassing board would be required to make a reasonable effort to notify each candidate whose race was being recounted. As many counting teams as necessary could be appointed.

Committee on Ethics & Elections

s/ [illegible]
Staff Director

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)

APPENDIX D — PALM BEACH COUNTY, FLORIDA, VOTING INSTRUCTIONS FOR THE NOVEMBER 7, 2000, GENERAL ELECTION


Voting Instructions
STEP 1
Using both hands, insert the unfolded ballot card all the way into the votomatic. If ballot card is folded, you will not be able to vote.
STEP 2
Be sure the two holes in your ballot card fit down over the two red pins.
STEP 3
To vote, hold the voting instrument straight up.. Punch straight down through the ballot card for the candidates of your choice.
Do not use pen or pencil
STEP 4
Vote all pages.
STEP 5
After voting, remove the ballot card from the Votomatic. Then fold the long stub down over the face of the voted ballot for privacy.
Note: If you make a mistake return your ballot card and obtain another.
AFTER VOTING, CHECK YOUR BALLOT CARD TO BE SURE YOUR VOTING SELECTIONS ARE CLEARLY AND CLEANLY PUNCHED AND THERE ARE NO CHIPS LEFT HANGING ON THE BACK OF THE CARD.

APPENDIX E — LETTER FROM SECRETARY OF STATE HARRIS TO PALM BEACH COUNTY CANVASSING COMMISSION, DATED NOVEMBER 15, 2000

FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State
The Capitol
Tallahassee, Florida 32399-0250
(850) 414-5500
http://www.dos.state.fl.us

November 15, 2000

Honorable Charles Burton
County Court Judge
Chair, Palm Beach County Canvassing Commission
Palm Beach County Courthouse
West Palm Beach, Florida 33401

RE: Request of Palm Beach County Canvassing Board to Amend Certification of County Returns After November 14, 2000 Statutory Deadline

Dear Chairman Burton:

I am in receipt of your letter of today's date in which you submitted a written statement of facts and circumstances relative to the request of the Palm Beach County Canvassing Board ("Board") to amend its certification of county election returns subsequent to the statutory deadline set forth in §102.112, Florida Statutes. As the Board is aware, §102.112, Florida Statutes, requires the Board to file its county election returns with the Department of State by 5 p.m. on the 7th day

following the general election. Also, §102.141(6) requires the Board to file at that time a report with the Division of Elections on the conduct of the election. That deadline expired at 5 p.m. yesterday, November 14, 2000. I also am in receipt of your report filed with the Division of Elections.

Notwithstanding that statutory deadline, the Honorable Terry P. Lewis, Circuit Judge, Second Judicial District, Leon County, entered an Order on November 14, 2000, directing me to withhold determination as to whether or not to ignore late-filed returns until I have given due consideration to all relevant facts and circumstances consistent with the sound exercise of discretion. There are no express statutory standards by which to evaluate the facts and circumstances associated with a late filing of county election returns. Thus, I have concluded that the appropriate standards for determining whether to exercise discretion to accept or reject election results filed subsequent to the statutory deadline are those standards utilized by the Florida courts in deciding whether or not to uphold a challenged election. Those criteria are as follows:

Facts & Circumstances Warranting Waiver of Statutory Deadline

1. Where there is proof of voter fraud that affects the outcome of the election. *In Re Protest of Election Returns*, 707 So. 2d 1170, 1172 (Fla. 3d DCA 1998); *Broward County Canvassing Bd. v. Hogan*, 607 So. 2d 508, 509 (Fla. 4th DCA 1992).

2. Where there has been a substantial noncompliance with statutory election procedures, and reasonable doubt exists

Appendix E

as to whether the certified results expressed the will of the voters. *Beckstrom v. Volusia County Canvassing Bd.*, 707 So. 2d 720 (Fla. 1998).

3. Where election officials have made a good faith effort to comply with the statutory deadline and are prevented from timely complying with their duties as a result of an act of God, or extenuating circumstances beyond their control, by way of example, an electrical power outage, a malfunction of the transmitting equipment, or a mechanical malfunction of the voting tabulation system. *McDermott, et al. v. Harris*, Case No. 00-2700, (Second Cir.), November 14, 2000, Order of Judge Terry P. Lewis.

Facts & Circumstances Not Warranting Waiver of Statutory Deadline

1. Where there has been substantial compliance with statutory election procedures and the contested results relate to voter error, and there exists a reasonable expectation that the certified results expressed the will of the voters. *Beckstrom v. Volusia County Canvassing Bd.*, 707 So. 2d 720 (Fla. 1998).

2. Where there exists a ballot that may be confusing because of the alignment and location of the candidates' names, but is otherwise in substantial compliance with the election laws. *Nelson v. Robinson*, 301 So. 2d 508, 511 (Fla. 2d DCA 1974) ("mere confusion does not amount to an impediment to the voters' free choice if reasonable time and study will sort it out.")

3. Where there is nothing "more than a mere possibility that the outcome of the election would have been effected."

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Broward County Canvassing Bd. v. Hogan, 607 So. 2d 508, 510 (Fla. 4th DCA 1992).

Facts and Circumstances Alleged by Board

For Purposes of determining whether to exercise my discretion to accept or reject late-filed election returns, I have considered all of the facts and circumstances set forth in your letter of today's date and assumed that they are true. The Board has alleged that it conducted a machine recount and a limited manual recount of one percent of the total votes cast and that the two recounts produced "different results than the machine recount." The Board has alleged that "the machine recorded approximately 10,000 undervotes." And, the Board alleged that it has received conflicting opinions from the Division of Elections and the Attorney General regarding the proper interpretation of §102.166(5), Florida Statutes, and that the Board is seeking adjudication by the Florida Supreme Court to resolve the conflicting opinions on whether the Board may conduct a manual recount under the law. Finally, the Board alleged that the results of a manual recount could affect the outcome of the election. In its report filed with the Division of Elections, the Board responded in the negative to the question of whether the county "had any problems which occurred as a result of equipment malfunctions either at the precinct level or at a counting location." In this report, the Board also noted that it would provide additional details regarding "difficulties or unusual circumstances encountered by an election board or canvassing board," and "problems which the canvassing board feels should be made a part of the official election record."

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Application of Criteria to Alleged Facts and Circumstances

The Board has not alleged any facts or circumstances that suggest the existence of voter fraud. The Board has not alleged any facts or circumstances that suggest that there has been substantial noncompliance with the state's statutory election procedures, coupled with reasonable doubt as to whether the certified results expressed the will of the voters. The Board has not alleged any facts or circumstances that suggest that Palm Beach County has been unable to comply with its election duties due to an act of God, or other extenuating circumstances that are beyond its control. The Board has alleged the *possibility* that the results of the manual recount *could* affect the outcome of the election if certain results obtain. However, absent an assertion that there has been substantial noncompliance with the law, I do not believe that the *possibility* of affecting the outcome of the election is enough to justify ignoring the statutory deadline. Furthermore, I find that the facts and circumstances alleged, standing alone, do not rise to the level of extenuating circumstances that justify a decision on my part to ignore the statutory deadline imposed by the Florida Legislature.

For the above-described reasons, I hereby decline to exercise any authority I may possess pursuant to §102.112, Florida Statutes, to accept election results reported by the Board after the statutory deadline of 5 p.m., November 14, 2000.

Respectfully submitted,

s/ Katherine Harris
Katherine Harris
Secretary of State

APPENDIX F — LETTER FROM SECRETARY OF STATE HARRIS TO MIAMI-DADE COUNTY CANVASSING COMMISSION, DATED NOVEMBER 15, 2000

FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State
The Capitol
Tallahassee, Florida 32399-0250
(850) 414-5500
http://www.dos.state.fl.us

November 15, 2000

Honorable Lawrence D. King
Chair, Miami-Dade Canvassing Board
Office of the Supervisor of Elections
Suite 1910
111 NW 1st Street
Miami, Florida 33128-1962

RE: Request of Miami-Dade Canvassing Board to Amend Certification of County Returns After November 14, 2000 Statutory Deadline

Dear Chairman King:

I am in receipt of your letter of today's date in which you submitted a written statement of facts and circumstances relative to the request of the Miami-Dade Canvassing Board ("Board") to amend its certification of county election returns subsequent to the statutory deadline set forth in §102.112, Florida Statutes. As the Board is aware, §102.112, Florida

Statutes, requires the Board to file its county election returns with the Department of State by 5 p.m. on the 7th day following the general election. Also, §102.141(6) requires the Board to file at that time a report with the Division of Elections on the conduct of the election. That deadline expired at 5 p.m. yesterday, November 14, 2000. I am not in receipt of your report due to be filed with the Division of Elections.

Notwithstanding that statutory deadline, the Honorable Terry P. Lewis, Circuit Judge, Second Judicial District, Leon County, entered an Order on November 14, 2000, directing me to withhold determination as to whether or not to ignore late-filed returns until I have given due consideration to all relevant facts and circumstances consistent with the sound exercise of discretion. There are no express statutory standards by which to evaluate the facts and circumstances associated with a late filing of county election returns. Thus, I have concluded that the appropriate standards for determining whether to exercise discretion to accept or reject election results filed subsequent to the statutory deadline are those standards utilized by the Florida courts in deciding whether or not to uphold a challenged election. Those criteria are as follows:

Facts & Circumstances Warranting Waiver of Statutory Deadline

1. Where there is proof of voter fraud that affects the outcome of the election. *In Re Protest of Election Returns*, 707 So. 2d 1170, 1172 (Fla. 3d DCA 1998); *Broward County Canvassing Bd. v. Hogan*, 607 So. 2d 508, 509 (Fla. 4th DCA 1992).

2. Where there has been a substantial noncompliance with statutory election procedures, and reasonable doubt exists as to whether the certified results expressed the will of the voters. *Beckstrom v. Volusia County Canvassing Bd.*, 707 So. 2d 720 (Fla. 1998).

3. Where election officials have made a good faith effort to comply with the statutory deadline and are prevented from timely complying with their duties as a result of an act of God, or extenuating circumstances beyond their control, by way of example, an electrical power outage, a malfunction of the transmitting equipment, or a mechanical malfunction of the voting tabulation system. *McDermott, et al. v. Harris*, Case No. 00-2700, (Second Cir.), November 14, 2000, Order of Judge Terry P. Lewis.

Facts & Circumstances Not Warranting Waiver of Statutory Deadline

1. Where there has been substantial compliance with statutory election procedures and the contested results relate to voter error, and there exists a reasonable expectation that the certified results expressed the will of the voters. *Beckstrom v. Volusia County Canvassing Bd.*, 707 So. 2d 720 (Fla. 1998).

2. Where there exists a ballot that may be confusing because of the alignment and location of the candidates' names, but is otherwise in substantial compliance with the election laws. *Nelson v. Robinson*, 301 So. 2d 508, 511 (Fla. 2d DCA 1974) ("mere confusion does not amount to an impediment to the voters' free choice if reasonable time and study will sort it out.")

3. Where there is nothing "more than a mere possibility that the outcome of the election would have been effected." *Broward County Canvassing Bd. v. Hogan*, 607 So. 2d 508, 510 (Fla. 4th DCA 1992).

Facts and Circumstances Alleged by Board

For purposes of determining whether to exercise my discretion to accept or reject late-filed election returns, I have considered all of the facts and circumstances set forth in your letter of today's date and assumed that they are true. The Board has alleged that it conducted a limited manual recount of one percent of the total votes cast with respect to the Office of the President of the United States, completed at approximately 8:00 p.m. on November 14, 2000. The Board also has alleged that it has voted to conduct a manual recount of six precincts with respect to votes cast in the race for Congressional District 22, and that this recount was scheduled to begin this morning. The Board has alleged no facts or circumstances in support of the manual recounts.

Application of Criteria to Alleged Facts and Circumstances

The Board has not alleged any facts or circumstances that suggest the existence of voter fraud. The Board has not alleged any facts or circumstances that suggest that there has been substantial noncompliance with the state's statutory election procedures, coupled with reasonable doubt as to whether the certified results expressed the will of the voters. The Board has not alleged any facts or circumstances that suggest that Miami-Dade County has been unable to comply

with its election duties due to an act of God, or other extenuating circumstances that are beyond its control.

For the above-described reasons, I hereby decline to exercise any authority I may possess pursuant to §102.112, Florida Statutes, to accept election results reported by the Board after the statutory deadline of 5 p.m., November 14, 2000.

Respectfully submitted,

s/ Katherine Harris
Katherine Harris
Secretary of State

APPENDIX G — LETTER FROM SECRETARY OF STATE HARRIS TO BROWARD COUNTY CANVASSING COMMISSION, DATED NOVEMBER 15, 2000

FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State
The Capitol
Tallahassee, Florida 32399-0250
(850) 414-5500
http://www.dos.state.fl.us

November 15, 2000

Honorable Robert W. Lee
County Court Judge
Chair, Broward County Canvassing Commission
201 SE 6th Street, Room 6760
Ft. Lauderdale, Florida 33301

RE: Request of Broward County Canvassing Board to Amend Certification of County Returns After November 14, 2000 Statutory Deadline

Dear Chairman Lee:

I am in receipt of your letter of today's date in which you submitted a written statement of facts and circumstances relative to the request of the Broward County Canvassing Board ("Board") to amend its certification of county election returns subsequent to the statutory deadline set forth in §102.112, Florida Statutes. As the Board is aware, §102.112, Florida Statutes, requires the Board to file its county election

returns with the Department of State by 5 p.m. on the 7th day following the general election. Also, §102.141(6) requires the Board to file at that time a report with the Division of Elections on the conduct of the election. That deadline expired at 5 p.m. yesterday, November 14, 2000.

Notwithstanding that statutory deadline, the Honorable Terry P. Lewis, Circuit Judge, Second Judicial District, Leon County, entered an Order on November 14, 2000, directing me to withhold determination as to whether or not to ignore late-filed returns until I have given due consideration to all relevant facts and circumstances consistent with the sound exercise of discretion. There are no express statutory standards by which to evaluate the facts and circumstances associated with a late filing of county election returns. Thus, I have concluded that the appropriate standards for determining whether to exercise discretion to accept or reject election results filed subsequent to the statutory deadline are those standards utilized by the Florida courts in deciding whether or not to uphold a challenged election. Those criteria are as follows:

Facts & Circumstances Warranting Waiver of Statutory Deadline

1. Where there is proof of voter fraud that affects the outcome of the election. *In Re Protest of Election Returns*, 707 So. 2d 1170, 1172 (Fla. 3d DCA 1998); *Broward County Canvassing Bd. v. Hogan*, 607 So. 2d 508, 509 (Fla. 4th DCA 1992).

2. Where there has been a substantial noncompliance with statutory election procedures, and reasonable doubt exists

as to whether the certified results expressed the will of the voters. *Beckstrom v. Volusia County Canvassing Bd.*, 707 So. 2d 720 (Fla. 1998).

3. Where election officials have made a good faith effort to comply with the statutory deadline and are prevented from timely complying with their duties as a result of an act of God, or extenuating circumstances beyond their control, by way of example, an electrical power outage, a malfunction of the transmitting equipment, or a mechanical malfunction of the voting tabulation system. *McDermott, et al. v. Harris*, Case No. 00-2700, (Second Cir.), November 14, 2000, Order of Judge Terry P. Lewis.

Facts & Circumstances Not Warranting Waiver of Statutory Deadline

1. Where there has been substantial compliance with statutory election procedures and the contested results relate to voter error, and there exists a reasonable expectation that the certified results expressed the will of the voters. *Beckstrom v. Volusia County Canvassing Bd.*, 707 So. 2d 720 (Fla. 1998).

2. Where there exists a ballot that may be confusing because of the alignment and location of the candidates' names, but is otherwise in substantial compliance with the election laws. *Nelson v. Robinson*, 301 So. 2d 508, 511 (Fla. 2d DCA 1974) ("mere confusion does not amount to an impediment to the voters' free choice if reasonable time and study will sort it out.")

3. Where there is nothing "more than a mere possibility that the outcome of the election would have been effected." *Broward County Canvassing Bd. v. Hogan*, 607 So. 2d 508, 510 (Fla. 4th DCA 1992).

Facts and Circumstances Alleged by Board

For purposes of determining whether to exercise my discretion to accept or reject late-filed election returns, I have considered all of the facts set forth in your report filed November 13, 2000, and your letter of today's date and assumed that they are true.

The Board states the following additional facts and circumstances that justify an amended certification:

1. Extremely large voter turnout, and the resulting ballots cast, dramatically increased the time required for the initial tabulation.

2. This Board, representing voters in the second largest county in Florida, needs additional time to complete all necessary tabulation, and should be afforded more time than boards representing voters in less-populated counties.

3. The large number of ballots has created additional logistical problems, requiring that ballots be moved to an alternate location for further tabulation. The Supervisor's location can accommodate a very limited number of counting teams.

4. The Board has encountered significant periods of delay, including:

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A. The actions of the Board have been materially impacted by numerous lawsuits, including lawsuits filed in state circuit courts in Broward County, Palm Beach County and Leon County, and in federal court in both the Southern District and Middle District of Florida.

B. The actions of the Board have been materially impacted by conflicting opinion letters issued by Cabinet officers. On November 13, 2000, an opinion letter was issued by the Director of the Division of Elections, on behalf of the Secretary of State. On November 14, 2000, a conflicting opinion letter was issued by the Office of the Attorney General. These opinion letters impacted the Board's decision-making process regarding a full manual recount and further impeded the Board's ability to proceed more expeditiously.

C. One of the members of the Board, Supervisor of Elections Jane Carroll, was out of state on a pre-planned family holiday and therefore unavailable from November 9, 2000 through November 12, 2000.

D. The Veterans' Day holiday, observed in Broward County by different governmental agencies on either November 10, 2000 or November 13, 2000, further limited the Board's ability to act.

E. The Board was required by state law to conduct an automatic recount prior to determining the necessity of a full manual recount.

Additionally, the Board, in its report filed with the Division of Elections on November 13, 2000, responded in the

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negative to the question of whether the county "had any problems which occurred as a result of equipment malfunctions either at the precinct level or at a counting location." In this report, the Board stated that "2 precincts failed to have ballots in transfer case; ballots retrieved from locked boxes left at precinct." And, the Board responded in the negative to the question of whether the board knew of "any other problems which the canvassing board feels should be made a part of the official election record."

Application of Criteria to Alleged Facts and Circumstances

The Board has not alleged any facts or circumstances that suggest the existence of voter fraud. The Board has not alleged facts or circumstances that suggest that there has been substantial noncompliance with the state's statutory election procedures. The Board has not alleged any facts or circumstances that suggest that Broward County has been unable to comply with its election duties due to an act of God, or other extenuating circumstances that are beyond its control. The Board has alleged large voter turnout and logistical problems associated with that turnout. However, Broward County is a large county and high voter turnout was not unexpected. The Board also has alleged delay in the certification process associated with litigation, a family holiday by the Supervisor of Elections, and the Veterans' Day holiday. However, I find that these circumstances, standing alone, do not rise to the level of extenuating circumstances that justify a decision on my part to ignore the statutory deadline imposed by the Florida Legislature.

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For the above-described reasons, I hereby decline to exercise any authority I may possess pursuant to §102.112, Florida Statutes, to accept election results reported by the Board after the statutory deadline of 5 p.m., November 14, 2000.

Respectfully submitted,

s/ Katherine Harris
Katherine Harris
Secretary of State

APPENDIX H — CERTIFICATION OF ELECTION RESULTS FROM THE NOVEMBER 7, 2000 GENERAL ELECTION

OFFICIAL CERTIFICATE OF THE STATE ELECTIONS CANVASSING COMMISSION OF THE GENERAL ELECTION HELD ON THE SEVENTH DAY OF NOVEMBER, A. D., 2000

We, BOB CRAWFORD, Commissioner of Agriculture, KATHERINE HARRIS, Secretary of State, and L. CLAYTON ROBERTS, Director, Division of Elections, constituting the State Elections Canvassing Commission, hereby certify the election returns of the general election returns of the general election held in the State of Florida on the Seventh day of November, A.D., 2000, as shown by the returns of said general election on file in the office of the Secretary of State from all the counties in Florida and herewith give below the results of said canvass:

For President of the United States, the whole number of votes cast was 5,958,643 of which number

George W. Bush and Dick Cheney (REP)	received	2,910,492 votes
Al Gore and Joe Lieberman (DEM)	received	2,910,192 votes
Harry Browne and Art Olivier (LIB)	received	16,401 votes
Ralph Nader and Winona LaDuke (GRE)	received	97,422 votes

Appendix H

James Harris and Margaret Trowe (SWP)	received	558 votes
John Hagelin and Nat Goldhaber (LAW)	received	2,273 votes
Pat Buchanan and Ezola Foster (REF)	received	17,472 votes
David McReynolds and Mary Cal Hollis (SPF)	received	618 votes
Howard Phillips and J. Curtis Frazier (CPF)	received	1,370 votes
Monica Moorehead and Gloria La Riva (WWP)	received	1,805 votes
May Chote and Miriam E. Lancaster (WRI)	received	34 votes
Ken. C. McCarthy and Frank Beifus (WRI)	received	6 votes

For United States Senator, the whole number of votes cast was 5,854,816 of which number

Bill McCollum (REP)	received	2,704,151 votes
Bill Nelson (DEM)	received	2,988,836 votes
Joe Simonetta (LAW)	received	26,075 votes
Joel Deckard (REF)	received	17,319 votes
Willie Logan (NPA)	received	80,819 votes
Andy Martin (NPA)	received	15,877 votes

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Darrell L. McCormick (NPA)	received	21,652 votes
"Nikki O." (WRI)	received	29 votes
Olen C. Faulk (WRI)	received	8 votes
Richard Grayson (WRI)	received	36 votes
Brian Heady (WRI)	received	6 votes
Argiris Malapanis (WRI)	received	8 votes

For Member, House of Representatives, One Hundred and Seventeenth House District, the whole number of votes cast was 24,941 of which number

Carlos Lacasa (REP)	received	24,940 votes
Richard Cason (WRI)	received	1 votes

For Member, House of Representatives, One Hundred and Eighteenth House District, the whole number of votes cast was 27,819 of which number

Edward B. Bullard (DEM)	received	27,819 votes
Marie Yves Jose Avignon (WRI)	received	0 votes

For Member, House of Representatives, One Hundred and Nineteenth House District, the whole number of votes cast was 32,794 of which number

Tom David (REP)	received	16,047 votes
Cindy Lerner (DEM)	received	16,747 votes

Appendix H

For Member, House of Representatives, One Hundred and Twentieth House District, the whole number of votes cast was 37,925 of which number

Ken Sorensen (REP)	received	19,123 votes
Ron Herron (DEM)	received	18,802 votes

IN TESTIMONY WHEREOF, we have hereunto set our hands and official signatures this Fifteenth day of November, A. D., 2000

s/ Bob Crawford
COMMISSIONER OF
AGRICULTURE

s/ Katherine Harris
SECRETARY OF STATE

s/ L. Clayton Roberts
DIRECTOR, DIVISION OF
ELECTIONS

[SEAL]
OFFICIAL SEAL OF THE
STATE OF FLORIDA
IN GOD WE TRUST

APPENDIX I — PRESS RELEASE ISSUED BY SECRETARY OF STATE HARRIS, DATED NOVEMBER 15, 2000

FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State
The Capitol
Tallahassee, Florida 32399-0250
(850) 414-5500
http://www.dos.state.fl.us

For Immediate Release
November 15, 2000

Contact: Ben McKay
(850) 414-5502

A Statement from the Secretary of State

Good evening.

On Tuesday, I requested those counties contemplating manual vote recounts to submit a written statement to me of the facts and circumstances justifying any belief on their part that they should be allowed to amend the certified returns previously filed by them in accordance with law.

All three counties — Palm Beach, Miami-Dade, and Broward — responded by the 2pm deadline today. Copies of their responses have already been distributed. Additionally, Collier County asked about the possibility of an amendment to their return unrelated to manual recounting. A copy of that letter has been distributed as well.

For the past week, I have devoted a substantial amount of my time to the issues surrounding manual vote recounts.

Appendix I

After Judge Lewis' decision of yesterday morning, my staff and I, together with counsel, developed criteria appropriate to the exercise of my discretion under Florida law. This criteria is clearly set forth in Florida case law.

For the past six hours, I have applied these criteria in deliberating upon the specific requests of the counties contemplating manual vote recounts. As a result of these deliberations, I have decided it is my duty, under Florida law, to exercise my discretion in denying the requested amendments. The reasons given in their requests are insufficient to warrant waiver of the unambiguous filing deadline imposed by the Florida Legislature.

I have communicated this decision to these counties in letters detailing the criteria I used in making my judgments, and the application of these criteria to the stated circumstances. Copies of these letters are available.

Because it is my determination that no amendments to the official returns now on file at the Department of State are warranted, the State Elections Canvassing Commission, acting in its normal and usual manner, has certified the results of last Tuesday's election in Florida, including the Presidential election. Copies of that portion of the certification relating to the presidential election, and the signature page of the certification, are also available.

As I have previously indicated, I expect that, after receipt, tabulation, and certification of the overseas absentee ballots by the counties, the state Elections Canvassing Commission will finally certify the Presidential election in Florida on Saturday.

Appendix I

This schedule, of course, is subject to judicial intervention. In that context, I once again will be unable, personally, to answer questions. However, I have with me our General Counsel, Debby Kearney, and two of our outside counsel, Joe Klock and Donna Blanton, and have asked them to remain behind to answer appropriate questions from you.

One final comment. I want to reassure the public that my decisions in this process have been made carefully, consistently, independently, and, I believe, correctly.

I am very grateful for your patience, and your understanding.

Thank you, and God bless.